

**COURT OF APPEAL  
STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT**

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**The Minutes**

**March 26, 2001**

At 9:30 a.m., the court met in the Library & Courts Building to begin its court calendar session. Present: Sims, Acting Presiding Justice; Davis, Associate Justice; Morrison, Associate Justice; and Conrad, Bailiff. Calendar Called.

**C034462      THE PEOPLE v. FRANZ**

Cause called. Kathryn Anne Houck, court appointed counsel, argued for appellant and additional citations were received. Thomas Y. Shigemoto, Deputy Attorney General, argued for respondent. Cause submitted.

**C034076      TERRILL v. FARMER BROTHERS COMPANY**

Appeal was dismissed prior to calendar call. There was no argument.

At 9:54 a.m., the court recessed. At 10:04 a.m., the court reconvened with Acting Presiding Justice Davis, Associate Justice Raye and Associate Justice Callahan.

**C032009      THE PEOPLE v. RAMSEY**

Cause called. Hilda Scheib, court appointed counsel, argued for appellant. John A. Thawley, Deputy Attorney General, argued for respondent. Cause submitted.

At 10:43 a.m., the court recessed. At 10:46 a.m., the court reconvened with Acting Presiding Justice Davis, Associate Justice Nicholson and Associate Justice Raye.

**C032898      INTERCARGO INSURANCE COMPANY v.  
G & G FIRE SPRINKLERS, INC., etc., et al.**

Cause called. Jon B. Eisenberg argued for appellants. Teresa L. Polk argued for respondent. Cause submitted.

At 11:24 a.m., the court recessed. At 11:25 a.m., the court reconvened with Acting Presiding Justice Sims, Associate Justice Morrison and Associate Justice Callahan.

**C031265      THE PEOPLE v. COBBS**

Cause called. Linda M. Leavitt, court appointed counsel, argued for appellant. Catherine G. Tennant, Deputy Attorney General, argued for respondent. Cause submitted.

At 11:59 a.m., the court recessed. At 2:00 p.m., the court reconvened with Acting Presiding Justice Blease, Associate Justice Nicholson and Associate Justice Morrison.



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**March 26, 2001, continued**

- C034275      THE PEOPLE v. GLASER      (Not for Publication)**  
The judgment of conviction is affirmed.  
BLEASE, J.  
We concur:    Scotland, P.J.  
                  Sims, J.
- C034346      THE PEOPLE v. HADDOCK      (Not for Publication)**  
The judgment (order of probation) is affirmed.  
SCOTLAND, P.J.  
I concur:      Blease, J.  
I concur that the search was lawful for the reasons described in part 1 of  
the Discussion.  
                  Sims, J.
- C034220      PACIFIC GAS AND ELECTRIC COMPANY v.  
CROSSROADS IRRIGATION DISTRICT et al.      (Not for Publication)**  
The judgment is affirmed.  
DAVIS, J.  
We concur:    Blease, Acting P.J.  
                  Morrison, J.
- C031974      THE PEOPLE v. BENITEZ      (Certified for Publication)**  
THE COURT:  
It is ordered that the opinion filed herein on March 6, 2001, be modified as  
follows:...The opinion in the above-entitled matter filed on March 6, 2001,  
was certified for partial publication in the Official Reports. For good cause  
it now appears that the opinion should be published in full in the Official  
Reports and it is so ordered.
- There is no change in the judgment.  
FOR THE COURT:  
                  Scotland, P.J.  
                  Morrison, J.  
                  Hull, J.

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**March 27, 2001**

- C033820      THE PEOPLE v. SANDOVAL      (Not for Publication)**  
The \$1,200 restitution fine imposed on September 1, 1999, pursuant to section 1202.4, subdivision (b) is stricken and the \$200 fine imposed on August 25, 1998, pursuant to that section is reinstated. The \$1,200 restitution fine imposed and suspended pursuant to section 1202.45 is reduced to \$200. In all other respects the judgment is affirmed. The trial court is directed to prepare a corrected abstract of judgment and to forward a copy to the Department of Corrections.  
                                DAVIS, Acting P.J.  
We concur:     Raye, J.  
                                Kolkey, J.
- C035048      THE PEOPLE v. NEAL, JR.      (Not for Publication)**  
The judgment is affirmed.  
                                SCOTLAND, P.J.  
We concur:     Sims, J.  
                                Hull, J.
- C035184      THE PEOPLE v. BASYE      (Not for Publication)**  
The matter is remanded to the trial court to remove count I as a strike, to clarify its finding on counts III and IV, and to strike the order to pay restitution for the broken window. In all other respects, we affirm the judgment.  
                                RAYE, J.  
We concur:     Davis, Acting P.J.  
                                Kolkey, J.
- C033816      Estate of ROBERT LEE SUTPHIN, Deceased.      (Not for Publication)**  
Appellant has failed to raise a cognizable issue relating to the final distribution. The order is therefore affirmed.  
                                DAVIS, J.  
We concur:     Blease, Acting P.J.  
                                Hull, J.

**March 28, 2001**

- C030917      THE PEOPLE v. SANDOVAL et al.      (Certified for Publication)**  
The judgment is reversed as to both defendants and remanded to the trial court for further proceedings. (CERTIFIED FOR PUBLICATION.)  
                                NICHOLSON, J.  
We concur:     Sims, Acting P.J.  
                                Raye, J.

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**March 28, 2001, continued**

- C032283      THE PEOPLE v. RUCKER      (Not for Publication)**  
The judgment is affirmed.  
                                 KOLKEY, J.  
We concur:    Blease, Acting P.J.  
                                 Hull, J.
- C033540      THE PEOPLE v. MARTINEZ      (Not for Publication)**  
The judgment is reversed.  
                                 DAVIS, Acting P.J.  
We concur:    Nicholson, J.  
                                 Raye, J.
- C036701      THE PEOPLE v. SAULTER      (Not for Publication)**  
The judgment is affirmed.  
                                 MORRISON, J.  
We concur:    Scotland, P.J.  
                                 Sims, J.
- C036748      THE PEOPLE v. MCKENZIE      (Not for Publication)**  
The judgment is affirmed. The trial court is directed to correct the abstract of judgment to reflect that defendant was sentenced under the two strikes scheme of sections 667, subdivisions (b) through (i), and 1170.2, and to forward a certified copy to the Department of Corrections.  
                                 MORRISON, J.  
We concur:    Scotland, P.J.  
                                 Sims, J.
- C036783      THE PEOPLE v. BLAKE-WILLIAMS      (Not for Publication)**  
The judgment is affirmed.  
                                 MORRISON, J.  
We concur:    Scotland, P.J.  
                                 Sims, J.
- C032778      DIESTRA v. AWAN et al.      (Not for Publication)**  
The judgment dismissing plaintiff's action and the order awarding attorney fees are affirmed. The Awans shall recover their costs on appeal. This disposition does not preclude the Awans from seeking their attorney fees on appeal pursuant to rule 26 (a) (4), California Rules of Court.  
                                 KOLKEY, J.  
We concur:    Sims, Acting P.J.  
                                 Morrison, J.

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**March 28, 2001, continued**

**C033275**      **HOLBROOK v. HOLBROOK**      **(Not for Publication)**  
The judgment is affirmed.  
CALLAHAN, J.  
We concur:    Davis, Acting P.J.  
                  Nicholson, J.

**C034639**      **In re MICHAEL W., SAN JOAQUIN COUNTY HUMAN SERVICES**  
**AGENCY v. TERESA W.**      **(Not for Publication)**  
The orders of the juvenile court are affirmed.  
KOLKEY, J.  
We concur:    Nicholson, Acting P.J.  
                  Morrison, J.

**C030447**      **THE PEOPLE v. CHAN**      **(Not for Publication)**  
THE COURT:  
It is ordered that the opinion filed herein on March 1, 2001, be modified as  
follows:...Appellant's petition for rehearing is denied.

There is no change in judgment.  
FOR THE COURT:  
Davis, Acting P.J.  
Morrison, J.  
Kolkey, J.

**C034972**      **WILMSHURST v. WILMSHURST**  
BY THE COURT:  
Appellant's petition for rehearing is denied.  
CALLAHAN, Acting P.J.

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**March 29, 2001**

- C029770      THE PEOPLE v. PARKER      (Not for Publication)**  
The judgment is affirmed. We note, however, that the abstract of judgment fails to accurately reflect the trial court's imposition of a restitution fine of \$10,000 pursuant to section 1202.4 and a parole revocation fine of \$10,000 pursuant to section 1202.45, which were accurately reflected in the reporter's transcript and the court's minute order. Appellate courts routinely correct errors in the abstract of judgment (People v. Sanchez (1998) 64 Cal.App.4<sup>th</sup> 1329, 1331); therefore, the superior court clerk is to prepare an amended abstract of judgment that accurately reflects these fines and to forward it to the Department of Corrections.  
KOLKEY, J.  
We concur:    Sims, Acting P.J.  
                 Morrison, J.
- C031617      THE PEOPLE v. CHASSER      (Not for Publication)**  
The judgment is reversed and the case is remanded for proceedings consistent with this opinion.  
BLEASE, Acting P.J.  
We concur:    Hull, J.  
                 Kolkey, J.
- C033155      THE PEOPLE v. MILLER      (Not for Publication)**  
The order committing defendant as a sexually violent predator is affirmed.  
HULL, J.  
We concur:    Scotland, P.J.  
                 Callahan, J.
- C033280      THE PEOPLE v. BURRESS      (Not for Publication)**  
The judgment is affirmed.  
HULL, J.  
I concur:      Callahan, Acting P.J.  
                 Kolkey, J.
- C033689      THE PEOPLE v. ROSS      (Not for Publication)**  
The judgment is modified to add \$150 in criminal laboratory analysis fees and \$255 in penalty assessments based thereon. The judgment is otherwise affirmed. The trial court shall prepare an amended abstract of judgment and send a certified copy thereof to the Department of Corrections.  
KOLKEY, J.  
We concur:    Scotland, P.J.  
                 Raye, J.

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**March 29, 2001, continued**

- C033821      THE PEOPLE v. SMITH      (Not for Publication)**  
The judgment is affirmed.  
                                 MORRISON, J.  
We concur:    Davis, Acting P.J.  
                                 Nicholson, J.
- C034410      THE PEOPLE v. SPECK      (Not for Publication)**  
The fine imposed under Penal Code section 1203.097, subdivision (a) (5) is stricken. The trial court is ordered to prepare a new abstract of judgment deleting the fine and to forward it to the Department of Corrections. In all other respects, the judgment is affirmed.  
                                 MORRISON, J.  
We concur:    Davis, Acting P.J.  
                                 Nicholson, J.
- C035020      THE PEOPLE v. STOUT      (Not for Publication)**  
The judgment is affirmed.  
                                 HULL, J.  
We concur:    Nicholson, Acting P.J.  
                                 Raye, J.
- C035187      THE PEOPLE v. STRICKER      (Not for Publication)**  
The judgment is affirmed.  
                                 HULL, J.  
We concur:    Sims, Acting P.J.  
                                 Nicholson, J.
- C035233      THE PEOPLE v. CUMMINGS      (Not for Publication)**  
The judgment is affirmed.  
                                 HULL, J.  
We concur:    Sims, Acting P.J.  
                                 Nicholson, J.
- C035338      THE PEOPLE v. WAHPETA      (Not for Publication)**  
The judgment is modified to require defendant to register as a sex offender. (§ 290.) The trial court shall prepare an amended abstract of judgment accordingly and forward a certified copy to the Department of Corrections. As modified, the judgment is affirmed.  
                                 HULL, J.  
We concur:    Sims, Acting P.J.  
                                 Nicholson, J.

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**March 29, 2001, continued**

- C036476      THE PEOPLE v. NICKELSON      (Not for Publication)**  
The judgment is affirmed. The trial court is directed to correct the abstract of judgment to reflect that defendant was awarded 135 days of custody credit and 66 days of conduct credit in each case, and to forward a certified copy of the amended abstract to the Department of Corrections.  
                                 SCOTLAND, P.J.  
We concur:      Nicholson, J.  
                                 Morrison, J.
- C031628      KATZBERG v. WHITE, as Executor, etc.      (Not for Publication)**  
The judgment (order) is affirmed. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 26 (a).)  
                                 KOLKEY, J.  
We concur:      Scotland, P.J.  
                                 Callahan, J.
- C033533      LANGFORD et al. v. R.O.M. CORPORATION      (Not for Publication)**  
The order denying plaintiffs' motion for judgment notwithstanding the verdict is affirmed. The order granting plaintiffs' motion for new trial is affirmed. The parties shall bear their own costs on appeal.  
                                 SIMS, Acting P.J.  
We concur:      Davis, J.  
                                 Morrison, J.
- C034165      STARZYNSKI v. CAPITAL PUBLIC RADIO, INC.      (Certified for Publication)**  
The judgment is affirmed. Defendant shall recover its costs on appeal.  
                                 SIMS, Acting P.J.  
We concur:      Morrison, J.  
                                 Hull, J.
- C035930      PETERSON v. FINANCIAL PACIFIC INSURANCE COMPANY      (Not for Publication)**  
The judgment is affirmed.  
                                 MORRISON, J.  
We concur:      Scotland, P.J.  
                                 Blease, J.

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**March 29, 2001, continued**

- C034491      THE PEOPLE v. KORY K.      (Not for Publication)**  
The order of the juvenile court adjudging Kory K. a ward of the court is reversed and the stay ordered by this Court, herein, on February 15, 2000, is vacated.  
BLEASE, Acting P.J.  
We concur:    Sims, J.  
                 Callahan, J.
- C035152      THE PEOPLE v. CORY ANN S.      (Not for Publication)**  
The orders terminating dependency and declaring wardship are reversed. The matter is remanded to the Lassen County Juvenile Court for further proceedings consistent with this opinion.  
HULL, J.  
We concur:    Blease, Acting P.J.  
                 Raye, J.
- C035333      SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES v. JADON H.      (Not for Publication)**  
The judgment is affirmed.  
HULL, J.  
We concur:    Blease, Acting P.J.  
                 Callahan, J.
- C035842      DEPARTMENT OF HEALTH AND HUMAN SERVICES v. ROSHNI P.      (Not for Publication)**  
The judgment is affirmed.  
MORRISON, J.  
We concur:    Scotland, P.J.  
                 Sims, J.
- C036083      BUTTE COUNTY CHILDREN'S SERVICES DIVISION v. TIMOTHY O. et al.      (Not for Publication)**  
The judgment is affirmed.  
SCOTLAND, P.J.  
We concur:    Sims, J.  
                 Morrison, J.
- C036183      THE PEOPLE v. MUSTAPHA J.      (Not for Publication)**  
The judgment is affirmed.  
HULL, J.  
We concur:    Sims, Acting P.J.  
                 Nicholson, J.

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**March 29, 2001, continued**

- C036517      SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES v. DENISE L.      (Not for Publication)**  
The juvenile court's orders are affirmed.  
                                 CALLAHAN, J.  
I concur:            Blease, Acting P.J.  
I concur in the result:  
                                 Sims, J.
- C030938      THE PEOPLE v. BOWERS      (Certified for Publication)**  
THE COURT:  
It is ordered that the opinion filed herein on March 7, 2001, be modified as follows:  
1. In the first full paragraph on page 13, delete the following case citation: People v. Morgan (2000) 85 Cal.App.4<sup>th</sup> 34, 38.  
2. In the second full paragraph on page 15, delete the following case citation: People v. Morgan, supra, 85 Cal.App.4<sup>th</sup> at p. 38.  
3. The final sentence in the second full paragraph on page 15 is modified to read as follows: In a given case, to "deliberate" means "to ponder or think about with measured careful consideration and often [but not necessarily] with formal discussion before reaching a decision or conclusion." (Webster's 3<sup>rd</sup> New Internat. Dict. (1986) p. 596.)  
  
This modification does not change the judgment. (CERTIFIED FOR PUBLICATION)  
THE COURT:  
                                 Nicholson, Acting P.J.  
                                 Hull, J.

**March 30, 2001**

- C035747      THE PEOPLE v. SEGOVIA, JR.      (Not for Publication)**  
The judgment is affirmed.  
                                 SIMS, J.  
We concur:        Scotland, P.J.  
                                 Morrison, J.
- C037096      THE PEOPLE v. NELMS      (Not for Publication)**  
The judgment is affirmed.  
                                 SCOTLAND, P.J.  
We concur:        Nicholson, J.  
                                 Morrison, J.

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**March 30, 2001, continued**

- C032640      THE COMMITTEE TO SAVE FALL RIVER et al. v. COUNTY OF SHASTA, FALL RIVER RANCH      (Not for Publication)**  
The judgment is reversed and the case is remanded to the trial court with directions to enter a judgment granting the petition, and to issue a peremptory writ of mandate directing the Board to set aside its adoption of the mitigated negative declaration and approval of the project, including the ordinance rezoning the project property and approval of the tentative map. The trial court is further directed to consider other relief as may be appropriate and consistent with this opinion, including petitioners' request for attorney fees under the private attorney general theory. Petitioners are awarded their costs on appeal. (Code Civ. Proc., § 1021.5; Woodland Hills Residents Assn., Inc. v. City Council (1979) 23 Cal.3d 917, 933, 935-942), in an amount to be determined by the trial court.  
HULL, J.  
We concur:    Blease, Acting P.J.  
                 Callahan, J.
- C033535      BLACK et al. v. GARDNER      (Not for Publication)**  
The judgment is affirmed. Plaintiffs' request for sanctions is denied. Plaintiffs shall recover costs on appeal.  
RAYE, J.  
We concur:    Nicholson, Acting P.J.  
                 Morrison, J.
- C035456      KATZBERG v. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA et al.      (Certified for Publication)**  
The judgment is affirmed. (CERTIFIED FOR PUBLICATION)  
MORRISON, Acting P.J.  
We concur:    Callahan, J.  
                 Kolkey, J.
- C035925      BUTLER v. KIA MOTORS OF AMERICA, INC.      (Not for Publication)**  
The judgment is affirmed.  
MORRISON, J.  
We concur:    Scotland, P.J.  
                 Blease, J.